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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 328

MOORE-McCORMACK LINES, INC.,
Petitioner,

vs.

THE UNITED STATES,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS AND BRIEF IN SUPPORT THEREOF.

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INDEX

Subject Index

	Page
Petition for Writ of Certiorari:	
Introductory	1
Opinions Below	2
Jurisdiction	2
Question Presented	2
Summary Statement of the Matter Involved	2
Grounds on which the Decision of the Court Below Rested	5
Reasons Relied on for the Allowance of the Writ	6
Brief in Support of Petition:	
Opinions Below	11
Jurisdiction	11
Statement of Facts	12
Specification of Errors	12
Summary of Argument	12
Argument	13
Conclusion	17

Citations

United States v. *Sherebeck*, 17 Fed. Cases, page 1063, Case No. 16275	13
Robertson v. *Downing*, 127 U. S. 607	14
Logan v. *Davis*, 233 U. S. 613, 627	14
Swendig v. *Washington Co.*, 265 U. S. 322	14
Brewster v. *Gage*, 280 U. S. 327	14
Chew Heong v. *United States*, 112 U. S. 536	15
Cook v. *United States*, 288 U. S. 102	15

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No. 328

MOORE-McCORMACK LINES, INC.,

Petitioner,

against

THE UNITED STATES,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS OF THE UNITED STATES

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Moore-McCormack Lines, Inc., respectfully prays that a writ of certiorari issue to review an order and judgment of the Court of Claims of the United States which was entered April 3rd, 1951, in so far as that court failed to grant judgment for payment for the carriage of Brazilian mail subsequent to June 3, 1941, in the sum of $32,043.43. (This sum is conceded by the respondent to be correct in amount if the petitioner is entitled to recover for this period. It has also been conceded and adjudged that the petitioner shall recover $43,198.56 for the carriage of Brazilian mail prior to June 3, 1941.)

Opinion Below

The opinion of the Court of Claims of the United States delivered by Whitaker, Judge, was filed on April 3, 1951, and has not yet been reported but is set forth in the Transcript of Record. The opinion of the Court of Claims upon the determination of the motion for a new trial (per Whitaker, Judge) was filed July 9, 1951 and has not yet been reported but also is set forth in the Transcript of Record.

Jurisdiction

The judgment of the Court of Claims of the United States sought to be reviewed was entered April 3, 1951. Jurisdiction to issue the writ requested is found in Title 28, United States Code, Section 1255.

Question Presented

The legal question presented involves the effect of a "decree" of the United States of Brazil (Brazilian Decree No. 3326, dated June 3, 1941) upon the undertaking of the United States under the Postal Convention of the Americas (ratified August 12, 1937, approved by the President of the United States, August 20, 1937, *and invoked by Brazil*) to carry Brazilian mail between Brazilian ports and ports of the United States by the same ships which the United States utilized for the carriage of its mail to Brazilian ports.

Summary Statement of the Matters Involved

This is an action brought by the petitioner against The United States for the recovery of money earned by the carriage of mail.

This petition is limited to the review of the question of the petitioner's right of recovery from the United States for the carriage of Brazilian mail after Brazilian Decree

of June 3, 1941. The Court below has denied that right, although it has found judgment for the petitioner for the period before that "decree".

The facts giving rise to the issue are as follows:

In 1939, the petitioner took over the operation of the SSs. Brazil, Argentina and Uruguay. It then began to carry United States mail from ports of the United States to Brazilian ports and it also began to carry Brazilian mail between certain Brazilian ports and between Brazilian ports and ports of the United States. It continued to carry such mail until the vessels were requisitioned in World War II by the United States. The United States paid the petitioner for the mail carried from United States ports to ports in Brazil but it declined to pay for the carriage of any Brazilian mail and this action was instituted. During the course of the trial the United States conceded that the petitioner was entitled to recover for Brazilian mails carried before the "decree" of June 3, 1941, ($43,198.56). That left the sole issue to be whether the "decree" of June 3, 1941 barred the petitioner from recovery for such carriage after that date (the amount involved conceded to be $32,043.43).

The pertinent part of the Postal Convention under which the United States of America bound itself to carry Brazilian mail is as follows:

"ARTICLE 3

FREE AND GRATUITOUS TRANSIT

"1. The gratuity of territorial, fluvial and maritime transit is absolute in the territory of the Postal Union of the Americas and Spain; consequently, the countries which form it obligate themselves to transport across their territories, and to convey by the ships of their registry or flag which they utilize for the transportation of their own correspondence, without any charge whatsoever to the contracting countries, all that which the latter send to any destination.

"2. In cases of reforwarding, the contracting countries are bound to reforward the correspondence by the ways and means which they utilize for their own dispatches."

In its defense the United States introduced a "decree" (Brazilian Decree No. 3.326 of June 3, 1941) offering the Portuguese text and what was represented as an accurate English translation. The pertinent part of *that* English translation is as follows:

"Article 2. It shall be obligatory for all fluvial, lacustrine and maritime carriers or companies of navigation and for Federal, State or Municipal railroads, to transport postal despatches and articles of correspondence gratuitously without limitation on weight or volume.

"Section 1. The transportation shall also be obligatory and gratuitous on railroads, navigation or public highway companies or carriers enjoying especial treatment, benefits or favors from the Union, the States and Municipalities.

"Section 2. In case of vessels the net tonnage of which is equal to, or less than ten tons, the weight of despatches to be transported shall not exceed 4% of such capacity."

The Court below construed the Brazilian "decree" as a bar to recovery of payment for mail carried after June 3, 1941.

The plaintiff relied upon the government's translation but after the decision of the Court below, the petitioner and its attorneys learned for the first time that the government's translation was erroneous. Thereupon, a motion was made for a new trial among other things upon the newly discovered authoritative translation by a duly accredited Brazilian Sworn Translator of the same part of said Decree. That translation reads as follows:

"Article 2. It shall be be obligatory for all Federal, State and Municipal enterprises or companies engaged

in river, lake and maritime navigation, or in the operation of railroads, to tranport postal despatches and articles of correspondence gratuitously, without limitation of weight or volume.

"Paragraph 1. The transportation shall likewise be obligatory and gratuitous as regards railroads and companies or enterprises engaged in navigation or highway traffic which enjoy special treatment, benefits or favors from the Union, the States or the Municipalities.

"Paragraph 2. In case of vessels the net displacement of which is equal to, or less than ten tons, the weight of despatches to be transported shall not exceed 4% of such capacity."

The decision of the Court below rests substantially upon the government's translation of the "decree" involved and the Court's construction of that translation without regard to the interpretation of the "decree" by the Brazilian Post Office Department and to the rule that a treaty will not be deemed to have been abrogated nor modified by a later statute unless such purpose has been clearly expressed.

Ground on Which the Decision of the Court Below Rested

The decision of the Court below is based upon what we believe is an erroneous translation. It has worked a great injustice not only in the instant case but *for all United States* ship mail carriers similarly situated. Judge Whitaker's opinion undertakes to construe that translation without reference to any of the principles of law urged. The following is the crux of his opinion:

> "Article I of the decree sets forth those means of transportation by which the mails of Brazil are authorized to be carried. Among them are 'steamships or packets belonging to foreign carriers, whether subsidized or not, sailing regularly between ports of Brazil and those of foreign countries'. After having so pro-

vided, the decree in Article 2 provides that 'it shall be obligatory for all fluvial, lacustrine and maritime carriers or companies of navigation and for Federal, State or Municipal railroads, to transport postal despatches and articles of correspondence gratuitously, without limitation on weight or volume'.

"Having first set out the various means for the carriage of mails, including people such as plaintiff, that is, 'Steamships or packets belonging to foreign carriers' etc. the decree then says that it shall be obligatory on all these means to transport the mails gratuitously.

"The quotation is from the English translation of the decree. The English word 'all' is a translation of the Portuguese word 'todas'. The literal translation of this word is 'each and every'. The decree, therefore, says that each and every one of the 'fluvial, lacustrine and maritime carriers' are obligated to carry the mails gratuitously. This means, of course, each and every one of those 'fluvial, lascustrine and maritime carriers' mentioned in the preceding article."

Furthermore, the determination is not in accord with United States law as shown in the reasons relied on for Allowance of Writ.

Reasons Relied On for Allowance of Writ

1. The decision below establishes a determination under which not only the petitioner but other United States ship carriers, carrying United States mail to Brazil must carry Brazilian mail to the United States on the same vessels *without compensation.* The Carrier ship can recover payment neither from the United States nor from Brazil. The decision affects not only the *past* but also the future.

2. The Court below overlooked and failed to apply the rule of the Federal Courts that in the absence of any judicial decision determining the construction of a foreign statute, the practical interpretation given it by those whose duty

it has been to apply and administer it affords the best means of ascertaining its true construction. In the present instance the Postmaster General of Brazil has advised the Postmaster General of the United States that the advantages granted the petitioner did not require the transportation of mail gratuitously.

3. The Court below overlooked and failed to apply the rule of law that the provisions of a treaty (in the instant case the Postal Convention) have greater legal force than any internal or local statute unless it abrogates the treaty. In the instant case the Convention has not been abrogated by any Brazilian or United States statute.

4. The Court below has stated that its conclusion "is fortified somewhat by the fact that not until it put in its proof in this case in 1946, did plaintiff present any detailed claim to the United States Post Office for the carriage of Brazilian mails from 1941 on. Such long delay indicates that plaintiff was under the impression that the United States was not liable therefor." This is not supported by anything in the record. The fact is that the plaintiff had wrestled many years from 1942 on with the United States Post Office Department to secure payment.

5. The Court below mistakenly and erroneously supports its conclusion by the statement that the obligation cast upon the plaintiff by this decree was not without consideration, that the so-called packet privileges granted to the plaintiff and accepted by it, obligated the plaintiff to carry Brazilian mails gratuitously.

The so-called "packet" law remained exactly the same after the Decree of June 3, 1941, was passed as before. Before that date the government has conceded the plaintiff should recover but after that date the contract of the plaintiff remained exactly the same. Packet privileges obligated the vessel to comply with the Stamp Tax, the sanitary

rules of the Health Department to transport free of charge one cubic meter of material sent by the Health Department, but never to transport mail free of charge for the Brazilian Government (Tr. Plaintiff's Exhibit No. 42). Simply yet accurately: Packet privileges carried specified obligations for the privileges granted. A definitely stated *quid pro quo*. The specified obligation did not include gratuitous transportation of mail.

6. The Court below is in error when upon the motion for rehearing it attempts to reconcile its decision with its original determination by construing what we believe is the correct translation as follows:

> "According to this translation, Article 2 relates only to Federal, State and Municipal transportation companies; but in paragraph 1 under Article 2 the translation reads:
>
> > The transportation shall likewise be obligatory and gratuitous as regards railroads and companies or enterprises engaged in navigation or highway traffic which enjoy special treatment, benefits or favors from the Union, the States or the Municipalities.
>
> "It is admitted that plaintiff did enjoy special treatment from the Union, and, therefore, presumably it comes within the companies mentioned in paragraph 1 of Article 2."

This is discussed and answered in the brief which follows.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Court of Claims of the United States, commanding that court to certify to and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case num-

bered and entitled on its Docket No. 46280, Moore-McCormack Lines, Inc., Plaintiff, *against* The United States, Defendant, and that the judgment of said Court of Claims of the United States be reversed by this Honorable Court in so far as it refused and denied the petitioner's right to recover $32,043.43 for the carriage of Brazilian mail subsequent to June 3, 1941, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

Dated: New York, N. Y., September 17th, 1951.

MOORE-MCCORMACK LINES, INC.,
Petitioner,

By MELVILLE J. FRANCE,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 328

MOORE-McCORMACK LINES, INC.,
Petitioner,

against

THE UNITED STATES,
Respondent.

BRIEF IN SUPPORT OF PETITION

Opinions Below

The opinions of the Court of Claims of the United States (per Whitaker, J.) are not reported but are set fourth in Transcript of Record.

Jurisdiction

The judgment of the Court of Claims of the United States sought to be reviewed was rendered on April 3rd, 1951, and a motion for a new trial was denied by an order entered on July 9th, 1951.

The jurisdiction of this Court is invoked under Title 28 United States Code, Section 1255.

Statement of Facts

The facts have been stated in the petition.

Specification of Errors

It is submitted that the Court below erred:

1. In refusing to render judgment in favor of the petitioner in the additional sum of $32,043.43 for compensation for carrying Brazilian mail from Brazilian ports to ports of the United States on the same vessels on which United States mail had been carried to Brazilian ports after June 3, 1941.

2. In finding and adjudging that the petitioner was obliged to carry Brazilian mail on its vessels from Brazilian ports to ports of the United States gratuitously after the enactment of Brazilian Decree No. 3.326 on June 3, 1941.

3. In finding and adjudging that the United States was not obligated to pay the petitioner, under the terms of the Postal Convention, for mail carried on its vessels from Brazilian ports to ports in the United States after June 3, 1941.

Summary of Argument

The petitioner (who in this case is representative of every operator of United States vessels from the United States to Brazil and carrying mails) is entitled to receive compensation from the United States under the Convention and Agreement Relative to Parcel Post, Panama, December 22, 1936 (Fourth Congress of the Postal Union of the Americas and Spain) for the carriage of Brazilian mails on its vessel.

The United States having, by treaty and convention, undertaken to play the part of Lady Bountiful should not renege on its obligations and leave the carrier without compensation for its services.

ARGUMENT

Brazilian Decree No. 3326 of June 3, 1941 does not affect the obligation of the United States under the Convention and agreement relative to parcel post, Panama, December 22, 1936 (Fourth Congress of the Postal Union of the Americas and Spain) to pay for the carriage of Brazilian mails on the claimant's vessels.

I

(1)

The Court below has completely ignored a basic rule of law.

(a)

That Federal rule is as follows:

> "In the absence of any judicial decisions which determine the construction and effect of a foreign law, the practical interpretation given to it by those whose duty it was to apply and administer it affords the best means of ascertaining its true meaning. Unless, therefore, it be clear that the officers charged with its administration have misconstrued it, a foreign court, with necessarily an imperfect acquaintance with the subject, ought to be slow to substitute its own construction of the law for that of the government which established it."
>
> *United States* v. *Sherebeck,* 17 Fed Cases, page 1063, Case No. 16275.

A like rule has the approval of textbook writers:

> "In the absence of any judicial decision determining the construction of a foreign statute, the practical interpretation given it by those whose duty it has been to apply and administer it affords the best means of ascertaining its true construction; and such construc-

tion will be followed, unless it be clear that it is erroneous."

59 *Corpus Juris,* 1033.

Brazilian Courts have never passed upon the question involved in this case. Why should they?

The Brazilian Government (through its Postmaster General whose duty it was to direct the transportation of Brazilian mails and therefore "whose duty it was to apply and administer" the decree in question) invoked the Postal Convention and officially stated "that the advantages granted (to this petitioner) do not make such transportation compulsory." The Postmaster General of Brazil so declared to the Postmaster General of the United States *both before and after the Decree of June 3, 1941.* (See Court of Claims special finding of fact number 12).

(2)

The Federal Rule as to the construction of Federal Statutes is to the same effect and supports in every way the rule of law which should be applied in this case.

"We have said that, when the meaning of a statute is doubtful, great weight should be given to the construction placed upon it by the department charged with its execution."

Robertson v. *Downing,* 127 U. S. 607.

"The situation therefore calls for the settled rule that the practical application of an ambiguous or uncertain statute by the Executive Department charged with its administraiton is entitled to the highest respect, and, if acted upon for a number of years, will not be disturbed except for very cogent reasons."

Logan v. *Davis,* 233 U. S. 613, 627.

See also:

Swendig v. *Washington Co.,* 265 U. S. 322;

Brewster v. *Gage,* 280 U. S. 327.

(3)

The Court below has ignored or overlooked the most important fact which it has found as a special finding. Upon the basis of its Special Finding of Fact No. 12 its decision in this case cannot be sustained. And in all equity and justice it should not.

II

The United States is under the obligation to convey by ships of its registry or flag (in this case the petitioner's ships), which it (the United States) utilizes for the transportation of its own correspondence, without any charge whatsoever to the contracting countries (in this case Brazil), all that which the latter (Brazil) sends to any destination; and the decree of June 3, 1941, under no circumstances can affect the obligation of the United States.

The Postal Convention is the law of the United States; the Convention has never been disavowed—on the contrary it has been "reinforced by the same article and paragraph of the Postal Convention held in Rio de Janeiro in 1946" (Finding No. 12).

A treaty will not be deemed to have been abrogated nor modified by a later statute unless such purpose has been clearly expressed.

Chew Heong v. *United States*, 112 U. S. 536;
Cook v. *United States*, 288 U. S. 102, 120.

No United States statute, no treaty nor convention has changed this Postal Convention.

The petitioner in this case has the right to look to the United States for payment for the carriage of Brazilian mail which under convention and law the United States has obligated itself to carry on the petitioner's vessel. For such carriage and service the United States is bound to pay.

So far as any Brazilian statute is concerned, unless it abrogates the Convention (which it does not), the United States cannot avoid the obligation it has incurred under the Convention. The Convention remains supreme.

III

The opinion of the Court of Claims upon the motion for a new trial does not follow the general rules of statutory construction.

In disposing of the translation by a certified Brazilian translator of the decree which is involved, the Court says:

> "Our decision would probably have been the same had plaintiff's translation of the decree been before us. According to this translation, Article 2 relates only to Federal, State and Municipal transportation companies; but in paragraph 1 under Article 2 the translation reads:
>
> 'The transportation shall likewise be obligatory and gratuitous as regards railroads and companies or enterprises engaged in navigation or highway traffic which enjoy special treatment, benefits or favors from the Union, the States or the Municipalities.'
>
> "It is admitted that plaintiff did enjoy special treatment from the Union, and, therefore, presumably it comes within the companies mentioned in paragraph 1 of Article 2." (Opinion of Court of Claims on Motion for New Trial.)

Paragraph 1 is a subordinate subdivision of Article 2 and by the usual and ordinary rules of construction does not extend the statute beyond Brazilian categories which are the limits of Article 2. It clearly refers to Brazilian "enterprises".

Although repetitious but so the "decree" may be before the Court, we quote:

> "Article 2. It shall be obligatory for all Federal, State and Municipal enterprises or companies engaged

in river, lake and maritime navigation, or in the operation of railroads, to transport postal despatches and articles of correspondence gratuitously, without limitation on weight or volume.

"Paragraph 1. The transportation shall likewise be obligatory and gratuitous as regards railroads and companies or enterprises engaged in navigation or highway traffic which enjoy special treatment, benefits or favors from the Union, the States or the Municipalities."

Conclusion

A Writ of Certiorari Should Be Granted.

Dated: New York, N. Y., September 17th, 1951.

Respectfully submitted,

MELVILLE J. FRANCE,
Counsel for Petitioner.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Convention and decree involved	2
Statement	2
Argument	5
Conclusion	12
Appendix	13

CITATIONS

Cases:

Adam v. *Saenger*, 303 U. S. 59	6
Bernstein v. *N. V. Nederlandsche-Amerikaansche etc.*, 11 F.R.D. 48	6
Board of Public Utility Commissioners v. *Ynchausti & Co.*, 251 U. S. 401	4
Brothers v. *United States*, 250 U. S. 88	7
Chesapeake & Potomac Tel. Co. v. *United States*, 281 U. S. 385	7
Chicago & Alton R'd. v. *Wiggins Ferry Co.*, 119 U. S. 615	6
Compania Trans. de Petroleo v. *Mexican Gulf Oil Co.*, 292 Fed. 846	6
Dainese v. *Hale*, 91 U. S. 13	6
Desmare v. *United States*, 93 U. S. 605	6
Fairmount Glass Works v. *Coal Co.*, 287 U. S. 474	11
General Pictures Co. v. *Electric Co.*, 304 U. S. 175	7
Hanley v. *Donoghue*, 116 U. S. 1	6
Helena Water Works v. *Helena*, 195 U. S. 383	9-10
Hudson River Pulp & Paper Co. v. *H. H. Warner & Co.*, 99 Fed. 187	6
Labor Board v. *Pittsburgh S. S. Co.*, 340 U. S. 498	7
Liverpool etc. Steam Co v. *Phenix Ins. Co.*, 129 U. S. 397	6
O'Keefe v. *United States*, 5 C. Cls. 674, affirmed, 11 Wall. 178	6
Rothschild v. *United States*, 6 C. Cls. 204	6
Rowan v. *Commissioner of Internal Revenue*, 120 F. 2d 515	6
Standard Fruit and Steamship Co. v. *United States*, 103 C. Cls. 659	3
Starr v. *United States*, 164 U. S. 380	7
Talbot v. *Seeman*, 1 Cranch. 1	5, 6

Cases—Continued:

	Page
United Fruit Co. v. *United States*, 103 C. Cls. Cls. 303	3
United States v. *Adams*, 6 Wall. 101	6
United States v. *Esnault-Pelterie*, 303 U. S. 26	7
United States v. *Gerlach Live Stock Co.*, 339 U. S. 725	7
United States v. *Johnson*, 327 U. S. 106	11
United States v. *Penn Foundry & Mfg. Co.*, 337 U. S. 198	7
United States v. *Pink*, 315 U. S. 203	6
United States v. *Sherebeck*, 27 Fed. Cas. 1062 (No. 16275)	8, 9
United States v. *Socony Vacuum Oil Co.*, 310 U. S. 150	11
United States v. *Uhl*, 137 F. 2d 858	6
United States v. *Wells*, 283 U. S. 102	7

Convention and Decree:

Postal Union of the Americas and Spain (50 Stat. 1657): Article 3	2, 13
Brazilian Decree No. 3.326 of June 3, 1941: Article 2, Secs. 1 and 2	3, 11, 13

Statute:

New York Civil Practice Act, Sec. 391	6

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 328

MOORE-McCORMACK LINES, INC., PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinions of the Court of Claims dismissing the petition in part (R. 22-27) and overruling a motion for a new trial (R. 27-28) have not yet been reported.

JURISDICTION

The judgment of the Court of Claims was entered on April 3, 1951 (R. 26); petitioner's motion for a new trial filed on April 19, 1951 (R. 28-30) and amended on April 26, 1951 (R. 37-41), was

overruled on July 9, 1951 (R. 27-28). The petition for a writ of certiorari was filed on September 15, 1951. The jurisdiction of this Court is invoked under 28 U.S.C. 1255.

QUESTION PRESENTED

Whether the Court of Claims erred in finding that under Brazilian law petitioner was required to carry certain mails free of charge and that the United States was therefore under no liability to reimburse it.

CONVENTION AND DECREE INVOLVED

The pertinent provisions of the Postal Union of the Americas and Spain (50 Stat. 1657) and of the Brazilian Decree No. 3.326 of June 3, 1941, are set forth in the Appendix, *infra,* pp. 13-14.

STATEMENT

Petitioner is an American steamship line operating between the United States and South American ports. It seeks payment by the United States for the carriage of mails placed on petitioner's ship by the Brazilian postal authorities. Petitioner bases this claim against the United States on the ground that it has been compelled to carry these Brazilian mails gratuitously under Article 3 of the Postal Union of the Americas and Spain (*infra,* p. 13, hereinafter referred to as the Convention) and that the United States, having subjected petitioner to this burden by virtue of its adherence to this Convention, by implication

undertook to reimburse it (cf. *United Fruit Co.* v. *United States,* 103 C. Cls. 303, 311; *Standard Fruit and Steamship Co.* v. *United States,* 103 C. Cls. 659, 682). The United States resisted petitioner's claim on the ground that petitioner's duty to carry Brazilian mails free of charge derived not from the Convention but from a Brazilian decree of June 3, 1941, No. 3.326 (R. 9; *infra,* pp. 13-14) obliging *all* maritime carriers to carry Brazilian mails free of charge. Petitioner contends that the word "all" in this decree does not include foreign steamship companies. The case was tried under a stipulation which provided (R. 17):

> 10. If the court finds that under Brazilian law subsequent to the Decree of June 3, 1941, and up to the date of suit, Brazil required plaintiff's vessels, to which had been granted packet[1] privileges, to carry Brazilian mails gratuitously, then payment is not due from the United States from the effective date of said Decree No. 3326. If the court finds to the contrary, then payment is due from the United States on appropriate documentary proof of carriage in form acceptable to the United States Post Office.

The Court of Claims found that the duty to carry Brazilian mails free of charge rested on the decree

[1] According to paragraph 4 of the stipulation, petitioner had asked for and received Brazilian packet privileges, pursuant to which its vessels received certain benefits and were obligated to perform certain burdens (R. 16, 25).

of June 3, 1941[2], since the Portuguese word *"todas"* meaning "all" or "each and every" covered foreign carriers as well as domestic ones (R. 21, 25). Accordingly, it held that, since the duty to carry Brazilian mails gratuitously was not imposed upon petitioner by the adherence of the United States to the Convention, it was not entitled to reimbursement by the United States for Brazilian mails carried after the effective date of the decree.[3]

Petitioner filed a motion for a new trial (R. 28-30, 37-41) based primarily on the ground of newly discovered evidence (R. 37-41). The alleged newly-discovered evidence accompanying the motion consisted of an additional translation of the Brazilian decree (R. 39-40). Petitioner asserted that this translation was "authoritative"[4] and would estab-

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[2] Petitioner's witness, Richard P. Momsen, testified that the decree of June 3, 1941, was confiscatory and, hence, violated the constitution of Brazil (Commissioner's Report, pars. 23, 25, R. 10-11, 13-14). The Court of Claims held that in view of the valuable packet privileges conferred upon petitioner, consisting of exemption from lighthouse dues, charity taxes and the grant of preferred berthing rights which considerably lowered its costs of operations in Brazil (cf. Commissioner's Report, par. 23 at R. 11), the liability to carry mails gratuitously could not be considered confiscatory (R. 25-26). This Court has upheld analogous Philippine legislation against the claim that it violated the Philippine Bill of Rights. *Board of Public Utility Commissioners* v. *Ynchausti & Co.*, 251 U. S. 401.

[3] The court awarded petitioner $43,198.56 for Brazilian mails carried prior to June 3, 1941, and $7,570.58 for Uruguayan mails. (R. 26, cf. Commissioner's Report at R. 8).

[4] Actually the so-called "authoritative" translation was prepared by a sworn translator (R. 40), who, in the United States, corresponds to a licensed translator who performs

lish the erroneous character of the translation which the Government had submitted at the trial (R. 38). The Court of Claims overruled the motion. It found that the questioned translation has been submitted to petitioner in October 1947, three and one-half years prior to the alleged discovery, and held that petitioner, had it desired to question the accuracy of the translation, should have done so long before. (R. 27-28.) It also observed that petitioner's own witness had testified at the trial that the questioned translation was correct except for an irrelevant stylistic inaccuracy.[5] Finally, after examining the text of the decree and the methods used in preparing the translation submitted by the Government and relied upon by the court, the court found that translation to be correct (R. 28).

ARGUMENT

1. Petitioner asks this Court to review a finding of the Court of Claims determining the scope of a foreign law. In the federal courts, a foreign law is a fact which must be pleaded and proved as any other fact. *Talbot* v. *Seeman*, 1 Cranch. 1, 19;

for a fee (R. 51). The two translations differ on the question whether the words "Federal, State and Municipal" qualify only "railroads" or "all fluvial, lacustrine and maritime carriers or companies of navigation and * * * railroads" (cf. R. 50).

[5] This witness, an American citizen, would seem to be well qualified to pass on the accuracy of a translation of statutory materials since he is an eminent member of the Brazilian bar (R. 25).

Dainese v. *Hale,* 91 U. S. 13, 20; *Liverpool etc. Steam Co.* v. *Phenix Ins. Co.,* 129 U. S. 397, 445; *Compania Trans. de Petroleo* v. *Mexican Gulf Oil Co.,* 292 Fed. 846, 850 (C.A. 2); *Rowan* v. *Commissioner of Internal Revenue,* 120 F. 2d 515, 516 (C.A. 5); *United States* v. *Uhl,* 137 F. 2d 858, 861 (C.A. 2); *Bernstein* v. *N. V. Nederlandsche-Amerikaansche etc.,* 11 F.R.D. 48, 49 (S.D.N.Y.). And since the construction of a foreign law is a question of fact in the trial court, it is likewise a question of fact in this Court and not subject to review if there is evidence to support the trial court's conclusions. *Hanley* v. *Donoghue,* 116 U. S. 1, 6; *Chicago & Alton R'd.* v. *Wiggins Ferry Co.,* 119 U. S. 615, 622-623; *Adam* v. *Saenger,* 303 U. S. 59, 63; *Talbot* v. *Seeman, supra; Hudson River Pulp & Paper Co.* v. *H. H. Warner & Co.,* 99 Fed. 187, 189 (C.A. 2).[6]

The rule that a foreign law must be proved as any other fact applies with equal force to proceedings brought in the Court of Claims. *O'Keefe* v. *United States,* 5 C. Cls. 674, affirmed, 11 Wall. 178; *Rothschild* v. *United States,* 6 C. Cls. 204. And this Court has held consistently that its review of the decisions of the Court of Claims is normally limited to questions of law. *United States* v. *Adams,* 6 Wall. 101, 112; *Desmare* v. *United States,*

[6] There is no federal statutory equivalent to Sec. 391 of the New York Civil Practice Act which permits the review by an appellate court of the trial court's rulings on foreign law. Cf. *United States* v. *Pink,* 315 U. S. 203, 220-221.

93 U. S. 605, 610; *Chesapeake & Potomac Tel. Co.* v. *United States*, 281 U. S. 385, 388; *United States* v. *Esnault-Pelterie*, 303 U. S. 26, 28; *United States* v. *Penn Foundry & Mfg. Co.*, 337 U. S. 198, 205.[7]

In this case, the finding of fact concerning the scope of the Brazilian decree is in accord with the testimony of a well-qualified Brazilian lawyer (R. 24-25). Thus, there is ample evidence in the record to support it, and it should not be disturbed. Moreover, the construction adopted by the Court of Claims is in harmony with the language of the decree, and is plainly correct. On the foregoing considerations, there is no warrant for further review.

2. Petitioner apparently has abandoned its argument that the term "all companies" appearing in the Brazilian decree does not include foreign companies. Here, its objection to the original decision of the Court of Claims appears to be limited to two points (Br. 13-16).

(a) Petitioner contends that the court below erred in not following the opinion of the Acting

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[7] Some of the decisions of this Court assimilate the findings of fact of the Court of Claims to a jury verdict. *Starr* v. *United States*, 164 U. S. 380, 382; *Brothers* v. *United States*, 250 U. S. 88, 93; *United States* v. *Wells*, 283 U. S. 102, 120. And recently this Court has held that it will not review even rulings of law made by the Court of Claims on issues of state law, if they lack general interest. *United States* v. *Gerlach Live Stock Co.*, 339 U. S. 725, 755. See also *Labor Board* v. *Pittsburgh S. S. Co.*, 340 U. S. 498, 503, and *General Pictures Co.* v. *Electric Co.*, 304 U. S. 175, 178.

Postmaster General of Brazil on the operation of the Decree of June 3, 1941, expressed in a letter written *post litem motam* at petitioner's request to the Postmaster General of the United States (R. 19). We submit that the Court of Claims properly refused to be bound by this interpretation on the ground that the Acting Brazilian Postmaster General, without more, is not authorized to give a binding interpretation of Brazilian law since that function is vested in another officer subject to the approval of the President (R. 24).

Furthermore, the record is barren of anything to show that the interpretation contained in the Acting Postmaster General's letter had been consistently applied to the Decree in the postal or other governmental establishments of Brazil by those whose duty it was to apply and administer the said Decree, or that the interpretation was the result of the refusal, generally acquiesced in, of the administrative officers to exercise their power to apply it to steamship companies.[8] Consequently, the letter did not evidence a "practical interpretation" of Brazilian law within the rule quoted by petitioner (Br. 13) from the case of *United States* v. *Sherebeck,* Fed. Case No. 16275, 27 Fed. Cas. 1062, 1063 (N.D. Cal.), to the effect that, in the absence of judicial construction, the courts

[8] The two letters (R. 20-21) referred to in the Acting Postmaster General's letter could not have been an interpretation of the Decree of June 3, 1941, since they were written prior to that date.

will be slow to disturb the interpretation of a foreign law placed upon it by those whose duty it was to apply and administer it, or to declare that powers frequently exercised and generally acquiesced in were usurped.[9] Here, there is no showing that the interpretation of Brazilian law contained in the letter had been followed regularly in administering the Decree, or that those whose duty it was to enforce the Decree had articulately declined to exercise their power to apply it to steamship companies. We submit that the Court of Claims committed no error in declining to be bound by the Acting Postmaster General's statement concerning the application of Brazilian law in general to steamship companies.

b. If we understand petitioner's second point correctly, it claims that even if the Brazilian Decree of June 3, 1941 required petitioner to carry Brazilian mail gratuitously, it was still entitled to reimbursement by the United States under the Postal Convention. This argument constitutes a complete repudiation of paragraph 10 of the stipulation which properly narrowed down the controversy to the only material issue, *viz.* whether or not the Brazilian Decree required petitioner to carry Brazilian mails free of charge. Cf. *Helena*

[9] In quoting from the language of the court in the *Sherebeck* case, which states the rule (Br. 13), petitioner omitted to show in its quotation the additional language used by the court to encompass the rule, as follows: "or to declare that powers frequently exercised and generally acquiesced in were usurped."

Water Works v. *Helena,* 195 U. S. 383, 394. Moreover, the case was tried under the proper theory. The Convention does not, as petitioner seems to contend, obligate the United States to reimburse, in any and all circumstances, ships registered under its flag and utilized by it to carry its own mail, for carrying the mail of other parties to the Convention. In fact, it makes no reference to the reimbursement of parties who carry the mail referred to therein. Where, however, such ships have carried the mail of other parties to the Convention in circumstances where the country sending the mail would be obligated to pay the carrier for its services, the United States has assumed, under the Convention, the financial burden of reimbursing the carrier for the transportation. Hence, the stipulation entered into in this case, *supra,* p. 3. But there is no implied obligation accruing from the language of the Convention that the United States shall reimburse a carrier where, under the law of the originating country, there was in the first instance no primary obligation on the part of that country itself to pay the carrier for its services. Here, there was no primary obligation on the part of Brazil to pay petitioner for carrying Brazil's mail, since the law of Brazil, *i.e.,* the Decree, forbade such payment.[10] *A fortiori,* there was no secondary obligation impliedly im-

[10] The Decree was not confiscatory since the obligation which it imposed on the carriers of Brazilian mail was in return for the grant of certain packet privileges consisting

posed by the Convention on the United States to reimburse petitioner for carrying the Brazilian mail. Petitioner's contention is, therefore, without merit.

3. Petitioner, finally, seeks a review of the overruling of its motion for a new trial in which it contended that the additional translation of the Decree was newly discovered evidence showing that the translation employed by the court was wrong. Decisions denying motions for new trials are matters falling within the discretion of the trial court and are not subject to appellate review in the absence of an abuse of discretion. *Fairmount Glass Works* v. *Coal Co.*, 287 U. S. 474, 481-482, and the authorities cited therein; *United States* v. *Socony Vacuum Oil Co.*, 310 U. S. 150, 247; *United States* v. *Johnson*, 327 U. S. 106, 111. Petitioner does not allege an abuse of discretion on the part of the Court of Claims in denying the motion.[11] The court below carefully examined the question of the accuracy of the translation and found that

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of exemption from lighthouse dues, charity taxes imposed on each sailor and officer, and the grant of preferred berthing rights (R. 11, 25).

[11] In overruling the motion for a new trial, the Court of Claims noted the subsidiary ground that in any event Section 1 of Article 2 of the Decree (*infra*, pp. 13-14) required petitioner to carry the mails gratuitously (R. 28). Petitioner asserts that this interpretation is erroneous since Section 1 constitutes only a proviso limiting the first paragraph of Article 2 and cannot create an independent liability (Brief, p. 16). There is no support whatsoever to this limited interpretation of the statute. In the absence of some proof of Brazilian statutory technique or construction, the decree must be read to mean what it says.

the one submitted by the Government was the correct one in view of the manner in which it had been prepared (R. 28; 43-54), and especially since petitioner's own witness had testified to its accuracy (R. 27). This renewed finding of fact, which is supported by ample evidence, should not be disturbed. *United States* v. *Johnson, supra,* at 111.

CONCLUSION

The decision below is correct and contains nothing that warrants review by this Court. It is respectfully submitted that the petition for a writ of certiorari should be denied.

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APPENDIX

1. The Postal Union of the Americas and Spain, ratified by the Postmaster General in August 12, 1937, and approved by the President in August 20, 1937 (50 Stat. 1657), provides in pertinent part:

ARTICLE 3

Free and Gratuitous Transit

1. The gratuity of territorial, fluvial and maritime transit is absolute in the territory of the Postal Union of the Americas and Spain; consequently, the countries which form it obligate themselves to transport across their territories, and to convey by the ships of their registry or flag which they utilize for the transportation of their own correspondence, without any charge whatsoever to the contracting countries, all that which the latter send to any destination.

2. In cases of reforwarding, the contracting countries are bound to reforward the correspondence by the ways and means which they utilize for their own dispatches.

2. The Brazilian Decree of June 3, 1941, No. 3.326 provides in pertinent part:

Article 2. It shall be obligatory for *all* fluvial, lacustrine and maritime carriers or companies of navigation and for Federal, State or Municipal railroads, to transport postal despatches and articles of correspondence gratuitously, without limitation on weight or volume.

Section 1. The transportation shall also be obligatory and gratuitous on railroads, navi-

gation or public highway companies or carriers enjoying especial treatment, benefits or favors from the Union, the States and Municipalities.

Section 2. In case of vessels the net tonnage of which is equal to, or less than ten tons, the weight of despatches to be transported shall not exceed 4% of such capacity. [Italics supplied.]

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